

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

ALEXSAM, INC.,  Plaintiff  v.  J.C. PENNEY CO., INC., AND J.C. PENNEY CORP.,  Defendants.	Civil Action No. 2:13-cv-5
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**FITCH EVEN AND GILLAM & SMITH'S MOTION FOR LEAVE TO WITHDRAW**

Fitch Even Tabin & Flannery ("FETF"), counsel of record for Plaintiff Alexsam, Inc. ("Alexsam"), on its own behalf and on behalf of its associated local counsel, Gillam & Smith, including each of the individual attorneys of FETF and Gillam & Smith who have appeared herein, respectfully request leave to withdraw from their representation of Alexsam as follows:

On October 2, 2013, while FETF was preparing for the trial set to begin on October 22, 2013 in Civil Action No. 2:13-cv-5, FETF was notified orally by Alexsam's separate counsel, Thomas Watkins, of Alexsam's intent to terminate FETF as its trial counsel. Alexsam's Motion For Continuance filed October 9, 2013 (Doc. No. 261) specifically states that Alexsam has provided notice that it has terminated FETF's representation. On October 11, 2013, Mr. Watkins provided notice to Gillam & Smith confirming that Alexsam has terminated Gillam & Smith's representation as well.

By reason of Alexsam's announced decision to terminate its attorney-client relationships with FETF and Gillam & Smith, pursuant to the ethical rules that FETF and Gillam & Smith believe may be applicable, Texas Rule 1.15(a)(3) and Illinois Rule 1.16(a)(3), FETF and Gillam & Smith believe that they are compelled to file this motion to withdraw from further

representation of Alexsam, except to the extent necessary to arrange its orderly withdrawal from the case and appearance of substitute counsel, avoiding to the extent possible prejudice to Alexsam. To facilitate the orderly substitution of counsel, FETF, on its own behalf and on behalf of Gillam & Smith, and each of the individual attorneys thereof who have appeared herein on behalf of Alexsam, hereby respectfully moves this honorable Court to grant this motion to withdraw as counsel for Plaintiff herein.

By Order dated October 11, 2013 (Doc. No. 262), the Court denied Alexsam's Motion for Continuance and set a hearing for October 16, 2013 to address issues relating to Alexsam's request. FETF and Gillam & Smith are fully prepared to try this case under the current October 22 setting and the remaining Alexsam cases. However, we respectfully submit that this motion to withdraw is appropriate in view of the above-cited ethical rules governing counsel's duties in response to receiving notice of termination from Alexsam.

FETF reserves all of its rights and privileges pursuant to its contractual relationship with Alexsam and other applicable law. Nothing herein or in any related proceedings shall be deemed to waive or in any other manner prejudice or diminish any of FETF's rights and privileges.

Respectfully submitted,

October 11, 2013

/s/ Steven C. Schroer  
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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on October 11, 2013. Any other counsel of record will be served by first class mail.

/s/ Steven C. Schroer  
*Attorney for Plaintiff, Alexsam, Inc.*

**CERTIFICATE OF CONFERENCE**

Counsel has complied with the meet and confer requirement in Local Rule CV-7(h). Specifically, Gil Gillam, local counsel for Alexsam, contacted Michael Smith, local counsel for J.C. Penney Company, Inc. and J.C. Penney Corporation, about the substance of this Motion on Wednesday, October 9, 2013, which is the same day that Alexsam's Motion For Continuance was filed. Mr. Gillam received a response at about 9:30 pm on Thursday, October 10 indicating that J.C. Penney Company, Inc. and J.C. Penney Corporation do not oppose the Motion with respect to the Gillam & Smith firm but do oppose with respect to FETF. The discussions have conclusively ended in an impasse with respect to the requested withdrawal by FETF, leaving an open issue for the Court to resolve.

/s/ Steven C. Schroer  
Steven C. Schroer  
*Lead Trial Counsel for Alexsam, Inc.*